IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.7504 OF 2005

Ganpat Bhiva Pande and another Applicants

versus

State of Maharashtra Respondent

Mr.S.H.Jadhav for applicants.

Mr.R.Y.Mirza, APP for respondent.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 25th November 2005

PC :

1. Learned counsel appearing for the applicant states that Criminal Miscellaneous Application No.672 of 2005 which was filed in the Sessions Court for bail, has been rejected in the absence of the applicants-accused and their advocate.

2. With the assistance of learned advocate appearing for the applicant and Mr.Mirza - APP, I have perused the order passed in the said criminal miscellaneous application. The order is passed ex-parte. Time and again, the Hon’ble Supreme Court as well as this Court has

emphasised the fact that applications for anticipatory and/or regular bail concern the life and liberty of an individual. Even if he is accused of crimes committed in most brutal manner, ultimately, if the statute permits him to apply for bail and confers upon the Court a discretion which has to be exercised judiciously, then such applications have to be decided in the presence of the applicants and their advocates. The applicants in custody and applying for regular bail, may be represented by Advocates. The advocates have no personal interest apart from espousing the cause and request of the accused. The applicant’s advocate being busy somewhere or not being able to attend the Court, does not mean that the applications have to be thrown out or rejected straight way. Rejection of applications for bail on merits by ex-parte orders cannot be a rule.

3. The Sessions Judge ought to have exercised caution and should have waited for the applicant’s advocate to make his submissions either on the very same day or on such other day to which the matter could have been adjourned. It is only when repeatedly advocates remain absent that such orders ought to be passed. It

is not clear as to whether the applicant's advocate was not present when the matter was called out, was not in court on that day or was not available at all. Even this Court has been observing a practice all through out that when bail applications are circulated, the same are decided in the presence of Advocates. The matters are either kept back or adjourned not with a view to accommodate the advocates but to see that the applicants' interests are not jeopardised but protected. Ultimately, in the interest of justice such practices are followed. The learned Judge ought to have followed them. The order dated 26th October 2005 is set aside. The bail application preferred by the applicant is restored to file. The same shall be dealt with expeditiously and after hearing the learned advocate appearing for the applicants as well as prosecution. Parties to appear before the Sessions Court on 1st December 2005. Application disposed of.

(S.C.DHARMADHIKARI, J.)